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HOUSE..... .....NO. 1.

MESSAGE

OF

HIS EXCELLENCY

LEVI LINCOLN,

COMMUNICATED TO THE

TWO BRANCHES OF THE LEGISLATURE.

JANUARY 5, 1831.

Boston:
DUTTON AND WENTWORTH, PRINTERS TO THE STATE.
Nos. 1 and 4, Exchange Street.

1831.

MESSAGE.

Gentlemen of the Senate, and
of the House of Representatives :

HAVING availed myself of your indulgence, at the commencement of the political year, to offer my sentiments upon the general subjects of concern in the administration of the Government of the State, and respectfully invited your attention to such prominent objects of regard, as my official situation required me, at that time, more particularly to notice, it will be the most appropriate discharge of duty, that I should confine the present Address to a communication of subsequent measures of Executive action, and to such topics as have since occurred to demand Legislative consideration. In doing this, however, so much of reference to what was before proposed may be proper, as shall connect the unfinished business of the last, with the remaining duties of the present Session.

It may justly be premised, that this meeting of the Government is one of unusual expectation and interest. Matters of more than ordinary import, and of lasting results, have been specially assigned for discussion. Let it be cause for mutual congratulation, and for deep and devout acknowledgment, that the times are most favorable to their satisfactory disposition. We have come together in a season of great prosperity, under circum-

stances of concord and much apparent harmony of sentiment among our Constituents, and with opportunity for the exercise of unbiased and dispassionate judgments upon the leading measures which the public good requires. The embarrassment and depression of business, and the discouragement to industry and enterprise, which marked the opening of the last year, were in its progress, in a great degree, overcome, and we now greet the commencement of a new period, bearing the full promise of the continuance of present blessings, and giving animating inducements to improvement, and an extension of the means of higher and better attainments.

The proposed amendments to the Constitution, which respect the season for the annual organization of the Government, and the ratio of representation in the popular Branch;—the mode to be prescribed for taking the valuation of the rateable property within the Commonwealth, affecting the proportionate contributions to the public taxes, and by a rule of the Constitution, a corresponding apportionment of the Delegation to the Senate;—and the question of renewal to the numerous Banking Corporations, of their legal capacities, connected as the operations of these Institutions are with all the business concerns of the Community, are subjects of reference from a former Session, which have claims to the highest consideration. There is enough, in either of them, in whatever manner it shall be disposed of, to stamp with memorable impression the deliberations of the present Legislature. It will be happy, indeed, if in their delay hitherto, that knowledge of public sentiment upon these measures of direct popular bearing has now been obtained, which will secure to your decisions upon them, the sanction of an ultimate approval by the People.

In revising a fundamental Law of the Government, it is always to be expected, that reverence for accustomed forms, and a spirit of acquiescence in long established arrangements, will withstand any attempt at alteration. These are conservative principles, without the influence of which, change would be wrought upon the slightest occasions. But when great and enduring objects of amelioration and improvement are to be effected, patriotism and true political sagacity will dictate a surrender of respect for usages, however sanctioned by authority or made familiar by time, in subserviency to the advancement of the public welfare.

It is undeniably true, that the pending amendments to the Constitution will, if adopted, produce a saving of expense to the State, and create, in the business of Legislation, greater certainty and despatch, attended with higher and more direct responsibilities.

As it regards the proposed change in the commencement of the political year, it may be permitted to me to bear witness, that since my present relation to the Government, and indeed since the Convention of 1820, not an occasion has arisen, which would have rendered necessary a second meeting of the Legislature, in any year, had the appointed season for its organization been that usually assigned for the transaction of business. On recurring to the Journals, for the same period, it will be found, that scarcely a measure of general interest has been offered for consideration at the first Session, but was postponed to the Winter, with little, if any, real progress towards maturity from its previous suggestion. Your own prorogation, the present year, warrants the remark, that the convenient time for legislation is not that fixed by the Constitution, for the assembling of the Government, while

the approbation by the People, of your prompt adjournment, may be regarded as a manifestation, by them, of an opinion favorable to the contemplated alteration. With just allowances for the additional length of a single Session, by bringing together the organization of the Government, and the whole legislative business of the year, there would still result the saving of many days in the aggregate of time, besides the occasion and heavy charge of a second travel. Should the other proposed amendment likewise succeed, or by any more satisfactory mode, the representation should hereafter be reduced from its present oppressive and almost illimitable extent, the annual draft upon the Treasury would be diminished, by a sum nearly equal in the saving, to the support of the Civil List. There would then also be more uniformity in the number and attendance of the Representatives, and greater congruity in acts of Legislation. The policy of State would not be made to fluctuate between the indifference of thin Houses, in seasons of public quiet, and appeals to crowded Benches, under the influence of local circumstances, or in times of high popular excitement. How far these considerations should prevail, over an indisposition to depart from ancient habits and associations, and the reasons for their continuance, is now brought to your decision.

In addition to the Constitutional requirement to a periodical valuation of the property of the Commonwealth, there will be found inducements, at this time, to hasten the service, in the changes which have taken place within the few last years, in the relative value of the different descriptions of property, and the proportionate amounts in which it is held in different Districts of the State. The apportionment of Taxes, regulated by the possession of property, will fail to be equal, when the assessment is

made long after the estimate. With an enterprising people, new interests are continually springing up, old branches of business are discontinued and other occupations commenced, and the condition of Individuals and Communities will be variously affected, improved or prejudiced, by the events which time rapidly and constantly produces. These changes have had unusual frequency and effect since the last valuation, and have become the occasion of expressions of disquietude and dissatisfaction with the necessary exactions for the public service. To restore the true measure of contribution, in this particular, is a dictate of the highest justice, and the importance of a prompt attention to the execution of the delicate and difficult task is now enforced by the urgency of a prescribed duty.

Pursuant to a Resolve of the seventh of June last, Commissioners were appointed to enquire into the condition of the Banks of the Commonwealth. A careful construction of the terms of the Resolve seemed to require, that distinct Commissions should be constituted for each of the Counties in which banks were situated. Considering it to be the purpose of the Legislature to ascertain the security to the public, *in a renewal of the Charters*, it was deemed proper to cause the examinations of the several Institutions to be made, as recently before the commencement of the present Session, and as nearly simultaneous as possible. The appointment of the Commissioners was therefore delayed to such time, as while it allowed sufficient opportunity for the performance of the service, effected these objects. Reports may be expected from each of the Commissions by the expiration of the time limited in the Resolve. In connexion with the information which is thus furnished, the Legislature will have of-

ficial Returns, under oath, from the Cashiers of the respective Banks, made in compliance with a recent requisition of the Executive, under the authority of an act passed on the 28th of February 1829. These latter Exhibits have relation to the state of the Banks on the first Saturday in June last. In fixing upon this period, it was designed to obtain an account of their condition antecedent to any manifestation of an intention by the Legislature, to cause an examination into their concerns, and which, by applying to an earlier and somewhat distant date, would afford means of judging, from a comparison of their situation, at different times, of their general management and solidity.

It will probably result from these Documents, that the credit of the existing Institutions is well sustained, and that the community are, at present, safe in their continuance.

The question of establishing Banking Corporations in this Commonwealth can hardly be considered, at the present day, as open to discussion. They have been made so long familiar to the wants, and conveniences, and uses of the citizens, that most of the business of society is now arranged with reference to the accommodations which they afford. It would doubtless have been better, that the system had been more cautiously introduced, and less liberally extended. Banks have been multiplied, here and elsewhere, greatly beyond the occasions of the Country. The injurious effects have been seen, in excessive issues of paper and in vexatious and profitless competitions to give to it circulation; in rash enterprizes of individuals induced by the facilities to credit, in unwarrantable expenses in living, in the embarrassments of debt, and in the sacrifice of estate, not unfrequently at-

tended with the loss of character. I would respectfully submit to the wisdom of your counsels, that, in no instance, should a Charter be granted or extended, except where it is satisfactorily shown, that there is both Capital for investment, and business to require the use of it. In the want, either of the one or the other, Banking can never be restrained to its legitimate purposes. Speculation, trading, bargain making, and stock jobbing, will take the place of discounting. Desperate hazards and uncertain gains will be the consequence, and, in the issue, individuals will be ruined and the public defrauded. But, with this precaution in respect to grants of Incorporation, and the guards and securities which experience has interposed, there will be little danger of a repetition of those great abuses which mismanagement has, in some instances, heretofore, committed. By retaining in the Government, the right to require, at pleasure, returns of the state of the Institutions, with the power of visitation and inquiry by Committees, and a control over the Charters upon any excess of authority, the means of correction may be applied, upon the first appearance of mischief. A sound currency will be preserved, and although, from accident, misfortune, or indiscretion, Stockholders may be liable occasionally to suffer, the security of the public will, at all times, be insured.

The proposition of a State Bank, with Branches, to be owned and managed by the Commonwealth, which has sometimes been suggested, appears to me to be recommended by few considerations of preference over the present arrangements, while it is exposed to obvious and weighty objections. It is even doubtful, whether such an Institution could be conducted with pecuniary profit. The private interest of Stockholders is a stronger incen-

tive to vigilance, than mere ministerial accountability. The ingenuity which searches out the sources of business, and acquires a knowledge of the circumstances of individuals; things essential to success in the operations of Banking; is rarely exercised but for personal advantage. Besides, the Government, under the present system, may, at its option, have a participation in the Stock of any or all the existing Corporations, and a corresponding agency in their management. By the tax now imposed, by the right to borrow at a low rate of interest, by the power to subscribe to the Capital, and to appoint a proportionate number of Directors, and above all, by the authority to prescribe, in the first instance, the fundamental Rules for the conduct of the Institutions, and to declare the forfeiture upon the violation of them, all the beneficial results of a State Establishment are enjoyed, while its inconveniencies, improper tendencies, hazards and disappointments are avoided. It should also be of no light consideration in a Republic, that liberty is most secure, and the people least exposed to corruption or oppression, where the administration of the civil authority is farthest removed from the influence of monied institutions.

After the passage of the Law of Congress, at the last session, making provision for the settlement of the Claim of Massachusetts upon the United States, for the services of her Militia, and for measures of defence, during the late war, it might confidently have been expected, that little further delay would be suffered in obtaining a final liquidation of the accounts, and payment of the debt, at least, to the extent of the appropriation. The Act, indeed, *in terms*, referred the Claim, for examination and adjustment, upon certain principles of discrimination in regard to the character of the service, to the proper ac-

counting officers of the Treasury, under instructions from the Secretary of War. But as the accounts had already been before the Department, where they had received a minute and critical investigation, it was supposed that the application of the provisions of the Law to the results of the previous auditings would, *at once*, be conclusive of the favorable disposition of the greater part of the demand. By rules much more rigorous, a sum exceeding *four hundred and thirty thousand dollars* had been found admissible against the United States; and it needed but a reference to the Public Documents to be convinced, that no part of this amount could now be excluded. The political objections which had heretofore been interposed to the settlement of the Claim were waived by the passing of the act, and the services were manifestly of a description to be brought within the scope of its remedial provisions. By the first article, under which the right to compensation was mainly to be insisted on, it was required only, that it should be made to appear, that "the Militia were called out to repel invasion, or under a well founded apprehension of invasion, and that their numbers were not in undue proportion to the exigency," and the accounts were to be settled upon the same principles of allowance which had been adopted in the settlement of the claims of other States, in similar cases. In the proceedings of the former auditing, the whole Claim had been reduced to the strictest classification under heads of discrimination plainly to be understood. A separation had been made of the different parts of the account. A portion consisting of unobjectionable and admitted charges became a certain and ascertained debt; the doubtful or unsatisfactory items, requiring explanation or further proof to their allowance, constituted a suspended bal-

ance ; and it seemed but necessary to present the existing state of the accounts to the view of the Secretary under the reference made to him by the law, to obtain his directions to the immediate payment of the liquidated part, and instructions to the accounting Officers for the revision and examination of the remainder.

No time was lost in attempting to engage the earliest attention of the Secretary to the subject. As early as the 9th of June, (the act having passed on the 31st of May,) I addressed to him a letter, referring to the law, and requesting to be informed how soon the business might receive his directions. The delay which had already taken place, of more than *fifteen years* from the dates of the disbursements, and the earnest desire of the State for immediate payment, were pressed upon his consideration. He was reminded of the circumstance of the former auditing of the accounts, and of the facility which this might now afford to their ready adjustment, and he was respectfully solicited to adopt the report of the Auditor in favor of the allowance to the extent to which the charges were found admissible upon the principles on which that auditing had been conducted, and to cause the residue under the more liberal provisions of the law, to be made the subject of further inquiry. Before this letter reached Washington, the Secretary had left the seat of government. Its receipt, however, at the Department, was subsequently acknowledged by the acting Secretary, under date of the 15th of June, with information that "it would be laid before the Secretary immediately upon his return, until which time nothing could be done in regard to it." That there might be no want of preparation to prosecute the business whenever opportunity should be permitted, a gentleman of high distinction,

who, as a member of the Delegation in Congress, had made himself familiar with the merits of the Claim, and ably and successfully vindicated its justice, was appointed an Agent of the State, pursuant to the resolve of the Legislature of the 5th of June last. Notice of this appointment under date of the 29th of June, was forwarded to the Secretary, in Tennessee, with a request, that, if his return was to be delayed, he would give instructions to the proper officer to proceed, during his absence, in the examination of the accounts, so far as the revision of them might be found necessary. It was not until the first of September, that a communication was received from him, of the date of the 18th of August, at Franklin, in Tennessee, by which I was informed, that "no rule or regulation had been made on the subject previous to his leaving Washington, but on his return the next month, it should be among the first subjects to engage his attention, and that he had written to the 3d Auditor to have the account prepared and in readiness, under the general heads directed by Congress, that, on his return it might be acted upon." The agent, who, in the mean time, had also addressed the Department to procure an attention to the subject, now applied to the Auditor for information of the course which was to be given to the inquiry, with a proffer of any services which his agency for the State might render useful. He was immediately answered, that "a reply would have to be deferred until the return of the Secretary."

On the last day of October, the Secretary reached Washington, where the Agent, by a few days had anticipated his arrival. The proposition was now distinctly renewed, personally, and in writing, by the Agent, that the ascertained sum of the admissible charges upon the

former auditing should be paid on that part of the account, and a revision of the residue be proceeded in, or that the advancement of that amount should be made generally, and the examination of the whole Claim immediately entered upon. After an interchange of several communications, and a delay, from the 1st to the 13th of November, the Agent was informed, that the various engagements of the Secretary, under the ordinary details merely of the office, and the business preparatory to the meeting of Congress "made it impracticable to examine, at once, into the Claims of Massachusetts and North Carolina, both of which were before him." Upon receiving this information, and being satisfied that a further continuance at the seat of Government, at that time, would be of no avail to the interests of the State, the Agent returned to Massachusetts.

This particular but naked recital of facts aud dates, without comment, I have felt constrained to make, in acquittal of my own responsibility, and to afford the information due to the Legislature and the People of the State, on a subject of deep and exciting public interest and solicitude.

The whole correspondence with the Department, and a Report made to me by the Agent, will be laid before you. I trust it will thus be made sufficiently to appear, that neither, in season nor in endeavour, has any thing been omitted, on behalf of the State, to bring this long vexed matter to a satisfactory issue. We have, now, the assurance of the Secretary, that "speedily as possible, the Claim will be attended to." The Agent will be present to represent the interests of the State, to exhibit the proofs, and offer the explanations and arguments which may be required, or to suggest any further measures of attention which may be made necessary here.

During the recess of the Legislature, measures have been taken to execute the provisions of the Resolve for the erection of a Lunatic Hospital. Upon the advice of the Executive Council, after diligent inquiry and a faithful comparison of various proposed situations, and with heed to the injunction which required, "that in selecting an eligible site for the Hospital, regard should be had to the centre of population, and to the cheapness of labor and materials for the construction of the building," the location of the Institution was fixed in the town of Worcester. A plot of twelve acres of Land, purchased at the cost to that Corporation, of *twenty-five hundred dollars*, of a singularly regular and beautiful elevation, commanding a view of the town and the rich scenery of the surrounding country, sufficiently near to the market and principal places of business for necessary accommodation, and yet so retired as to be secure from improper intrusion or disturbance, and within a short distance of the head waters of the Blackstone Canal, has been conveyed in fee to the Commonwealth, without other consideration than the interest taken in the locality of the Institution; and the registered deed thereof, approved and accepted by the Executive, is deposited in the Archives of State.

Commissioners were appointed to cause the erection of the Hospital, pursuant to the further directions in the Resolve, and the work has been commenced and prosecuted as far as the season and other circumstances would permit.

It is with great satisfaction that I feel authorized to add, that the preference which was given to the selected site, is fully justified by the more recent observations and practical experience of the Commissioners. It has been found, that the natural formation of the ground was pecu-

liarly adapted to the application of an approved plan for the Building, and that labor and most of the materials are to be obtained at rates lower than the estimates. The character of the Commissioners, for intelligence, energy, and discretion, and the deep interest which they have taken in accomplishing the humane and philanthropic purposes of the Government, afford the best assurance, that the Structure, with its appurtenant accommodations, will be prepared for occupation, with as much economy and dispatch, as the nature and magnitude of the undertaking will admit.

The authority given to the Executive to cause a Map of the State to be made from actual surveys, on Trigonometrical principles, and by Astronomical observations, is in a course of execution. An assistant Civil Engineer, of high qualifications, and much experience, has been associated with the Principal Surveyor in the labor of admeasuring the Lines and projecting a Plan of the Territory. Some delay in commencing the work was unavoidable, from the want of suitable Instruments for its accurate and satisfactory accomplishment. Such as were not otherwise to be obtained in the country, have been procured on loan from the Engineer Department, under directions from the President of the United States, who justly regarded the service, which, in the manner proposed for its performance, would necessarily present a Chart of our extensive Sea Coast, and ascertain the proper positions for signals, and stations for Telegraphic communication, in the event of foreign war, as a thing of national interest. Since the Instruments were received, the Engineer has been diligently employed in fixing a base line, in the neighborhood of the Connecticut River, of sufficient extent for the process of Triangulation. A line of verifica-

tion is yet to be found in the Southern section of the Commonwealth. With the opportunity of preparation, during the winter, the Surveys may be resumed early, and prosecuted, uninterruptedly, another season.

The pains proposed to be bestowed upon this work, to make it thoroughly correct and worthy the authority of the State, although occasioning some delay in the time of its execution, and necessarily attended with considerable expense, will, I trust, meet with your approbation. A good Map of the Commonwealth has long been an object of very general and earnest desire. The attention recently given to the subject of internal improvement, has more clearly evinced the want, and increased the need of such a Directory. All classes of People have an interest in its possession and use. Not only is it of convenience in the conduct of many of the most common concerns of Individuals, but the Legislator and the Magistrate find occasion for the aid it affords in the discharge of public trusts. Not a Town or Parish is created or altered in its limits, nor a Road established or discontinued, but upon recourse to the Map for the bearings of these measures upon existing divisions of Territory. When it is considered, how constantly and universally the Map is consulted, and how extensively it is made to affect the affairs of the community, the importance of its accuracy will not be too highly estimated. Reference to Lines and Monuments and the natural boundaries of country are but misdirections, when these are incorrectly delineated. They mislead in the commencement of undertakings, and occasion mistakes in their progress, and disappointment and loss in the issue of them.

Greater progress has been made in the Geological explorations of the State. The distinguished Professor,

who is charged with this service, has successfully devoted to it the most favorable season of the past year. With a single Attendant, and at little expense, he has examined the Geological structure of the Southern and North Eastern Sections of the Commonwealth, as far North as a line in a direction from the mouth of Miller's River to Salem, including the principal Islands on the Sea Coast, and having, at a former period, acquired a general knowledge of the Geology of the country West of the Connecticut River, there remains only, for his labors abroad, a partial re-examination on that side, together with a survey of the portion East of that River and North of the line aforementioned. In a recent communication, he informs me, that "three quarters of the State have now been explored, geologically, and that he may probably finish his examination in another season."

Directions were given, that, in connexion with the Survey, Specimens of all Minerals, and varieties of Rocks of rare formation, or of adaptation to ornamental or useful purposes, should be preserved in sets, for the Government, and for the Cabinets of each of the Colleges. The collection is already extensive, comprising more than a thousand specimens, scientifically distinguished and labelled. The Report, which may be looked for from the learned Professor, on the completion of the work, will not fail to be highly interesting, and a valuable acquisition to the stores of knowledge. Some suggestions made by him of new subjects for inquiry, which I deem proper to refer to your consideration, induce me to submit to you parts of a late correspondence between us.

The Reports of the Officers of the State Prison show the highly improved condition of that Institution. It is now made, eminently, what a Penitentiary should become,

a place of just yet merciful correction, and of the means of moral reform. A strict and steady discipline has been enforced from the time of the occupation of the new Building. All improper indulgencies have been effectually repressed, intercourse and social communication are prevented, and constant restraint, in alternate labor and the seclusion of the solitary cell, is imposed. The faithful offices of the Chaplain give opportunity for religious improvement. Instruction is imparted in exercises of private and public devotion, by an attendance on morning and evening prayers, in the teachings of the Sunday School, and in stated ministrations on the Sabbath. Classes of the young and ignorant are taught to read and write, and whatever respite is allowed from toil to any, is given to the means of moral and intellectual culture, to self reflection, or to necessary rest. Already the fierce and turbulent spirit is seen to yield, and habits of submission, useful occupation, and patient industry to be formed. The Inspectors, in their Report, say, "the effects of the new system, under the direction of the Warden, Chaplain, and Physician, are visible and cheering to the prospects, and encouraging to the hopes of the friends of Penitentiary Reform. The Convicts have become more submissive, obedient, orderly and contented, more susceptible of moral influences and religious impressions. They are easily governed, and attentive to the instructions of the Chaplain. Few punishments are inflicted, and those chiefly for minor offences, and their daily tasks are diligently performed, without the aid of pecuniary rewards." A frequent visitation and careful inspection of the Prison afford the truest cause for satisfaction with this representation. To the principal Officers the community are indeed indebted, in a measure of respect

greatly beyond what is due for the mere performance of duty. They have given to the objects and interests of the Institution a purpose of mind, and a devotion of feeling, which have added ten-fold influence to the voice of authority.

With the advancement of moral purposes, it is gratifying to find, that the pecuniary affairs of the Prison are also improving. By the accounts made up to the first of October, the balance of expenditures beyond the earnings of the Convicts, the last year, appears to be $6892,02— and the whole excess, into $90,60, to have been incurred in the first six months of that period. The deficiency in 1829, was $8396,43, and in the year preceding it exceeded $12,000. It should be distinctly understood, that in stating the accounts for the year past, no credit has been given for the labor of the Convicts upon the new Chapel erected within that time, and that the Institution is chargeable with an expense of not less amount, in the estimation of the Inspectors, than $2000 *annually*, for the removal of Prisoners from the County Jails, and for Clothing furnished to discharged Convicts, and allowances of money to enable them to return to their families, or for their temporary subsistence while they seek employment, immediately upon their liberation. These items, so considerable in the aggregate, and the latter so creditable to the humanity of the laws, have no necessary connexion with the support of the Prison. They are believed to be peculiar to this establishment, and should be taken into consideration, when comparing the accounts of recent with former years, and the pecuniary results of this, with other similar Institutions. With such deductions, and a credit to the Prison for the labor upon the Chapel, the balance of the last year would be reduced to less than $4000.

It is scarcely reasonable to expect that the Prison, under an entire change in its arrangement and government, should be made, at once, a place of profitable labor. From the physical incapacity of some of the convicts, the short terms of the commitments of many of them, their previous habits of idleness, and, generally, their ignorance and unskilfulness, at first, in the work to which they are put, their productiveness is, in no degree, proportionate to their numbers. But experience is continually suggesting improved modes for their employment, and for effecting savings in the cost of their support. By judicious management, rigid economy, and a strict accountability under the administration of the present system, it may be hoped, that the annual debit will be made gradually to diminish, and, with better prices for labor and the productions of the Prison, the balance may be shifted to the credit side of the account. The Reports to which I have referred will be laid before you. They present, in interesting detail, a history of the management and condition of each department of the Institution. I particularly recommend to your official direction the alterations which are proposed in the Hospital, and the further accommodations which are required in the Yard. If these should be authorized, they may be executed, principally, by the labor of the Convicts.

The Accounts of the Treasury Department for the past year, made up to the first of the present month, show an excess of Expenditures over Receipts, of $10,551 16; the former amounting to $330,440 28, the latter to $319,889 12. This is exclusive of loans, on the one hand, or payments on account of loans on the other. At the commencement of the last year the debt of the Commonwealth, on account of money borrowed, was $107,300

00—it is now $114,100 00. The balance in the Treasury was then $29,026 38—now it is $25,275 22. In comparing the amount of Expenditures for the two years, as they appear in the abstracts of the Treasurer, it is to be regarded, that the salaries of the Civil Officers of the Government, for three quarters only, were included in the account of 1829, while the remaining quarter of that year now swells the amount of expenses for 1830. It should also be noted, that the Receipts from the ordinary resources of the Treasury have sensibly fallen off. The amount of Duties received from Auction Sales, is less by $4,209 27; and from the reduction of the Capital of some of the Banks, and by vacating the charters of others, the Bank Tax has been diminished $4,402 70. A small proportion only of the appropriations, for Surveys now going on, and for the Hospital in building, has yet been wanted, and the balance should be taken into the estimate of expenses for the current year. To meet the demands upon the Treasury, and prevent the accumulation of debt, the grant of a tax of the usual amount will be necessary.

My attention has been drawn to a decision of the Supreme Judicial Court of the Commonwealth, at the last term in Suffolk, in an action of debt brought by the Treasurer, on an Auctioneer's Bond, for the recovery of a sum of money supposed to have accrued to the Government, under the Statute of 1822, Ch. 37, imposing duties upon Sales by Auction. The act provides *that all Real and Personal Estate*, with certain exceptions not affecting the case, *which shall at any time be exposed to sale at public auction or vendue*, shall be subject to certain specified duties. In the case before the Court, the transaction was an offer at auction to lease certain tenements for five

years to the highest bidder of an annual rent for their occupation, for that time. The contract was struck off at a bid of $1950 annually, and a Lease, by Deed of Indenture, thereupon executed between the owners in fee and the Purchaser. It was held by the Court, *that this was not a sale of Real or Personal Estate, under the Statute, there being no Estate sold, but a mere contract to create an Estate for years.* "All that was offered to be sold and was sold, (say the Court,) was an engagement or contract to lease the Estate for five years. It was only in fact to ascertain the Annual Rent in the form of a Sale."

This construction, although unquestionably sound and required by the language used in the Statute, was different from that which had been practically adopted at the Treasury, and, in its application, it is apprehended, may seriously affect the revenue from sales by Auction. It certainly indicates a defect in the law, through which, by a little management, its provisions may, in many cases, be evaded. Contracts, by auction, to Lease Real Estate are of frequent occurrence. They are made for all periods of time, from a single quarter, to a length of continuance short only of an absolute fee. In principle there can be no difference between a contract for a Lease for five years, and one for ninety-nine years, a limitation not unfrequent in the transfer of Real Property. If the law is to attach to no contract of sale by auction, but where the property itself, *in its pre-existing state* is the subject of the sale, a class of cases will escape the tax, which are clearly within the reason of the enactment. Most transfers may be effected by such executory engagements. Any less estate, carved out of a greater, is as truly a new created interest, as a term for

years out of a tenancy in fee. It is intimated in the opinion of the Court, that the sale of an actually existing lease may be within the liability to the duty. But it is manifest that the duty here would be evaded, by a contract to assign a property, less in amount or duration, or in any respect other than the lease itself, with the whole interest held under it. The rule of construction given to the law, may, possibly, also be made to apply to personal property.

For Merchandize itself, a contract in form to deliver Merchandize may, in some instances, conveniently enough be substituted; and in lieu of a sale of goods, there may be only an engagement with the highest bidder, for supplies of goods. For ought I can perceive, all the raw materials for manufacturing establishments or for other objects might, through the intervention of auctions, thus be provided, and their products, in return, disposed of. Instead of a hundred bales of Cotton, for instance, an offer to contract for furnishing this article, in any quantity and for any time, might be the subject of sale to the highest bidder. In this no property would be sold, but an engagement only to furnish property, and the bid, as in the case of the lease, would but ascertain the price. If, therefore, the Legislature intend, that sales of this description shall hereafter pay a duty, the law requires amendment. The case decided by the Court may be of a class intentionally omitted, but the construction which the law has received will present questions of more important bearing. The subject is worthy of regard, and I recommend the expediency of revising the Statute, to your consideration. Should this be done, it may be necessary to prescribe a mode by which, when the sale is for a contingent sum, or upon an annual rent, the amount of duty shall be determined.

The important and responsible Agency of the Land Office continues to be satisfactorily and successfully conducted. By the judicious arrangement, and personal care and supervision of the Agent, the public lands are protected from depredation, and sales, to a considerable amount, effected. During the last year, these sales, of various parcels, in different parts of the State of Maine, equal in quantity to about five Townships of six miles square, have produced $30,931 41, and the permits for the cutting of Timber $3238 02. The aggregate amount, after deducting incidental expenses, has been paid by the Agent, in money and securities, into the Treasury of the State.

The authority under which the Agent now acts, restricts him in the sale of Townships, to those which lie south of the Monument Line. On the north of that line the lands are said to be of excellent quality and in demand for settling. I submit to the Legislature whether it may not be expedient to extend the authority of the Agent, under restrictions as to price and number of Townships, to sell on either side of the line, where the demand shall give the best market. It is obviously for the interest of the Government to dispose of those lands first, which are most sought after for immediate settlement, as by every approximation of population and improvement to the more remote and less desirable districts, these, in turn, become appreciated.

In proposing, however, an extension, or even a continuance, of the sales of the Public Lands, I cannot but ask your indulgence to the repetition of a recommendation offered by me to a former Legislature, that the proceeds should be made to constitute a fund, pledged to the purposes of Education, and to objects of Internal Improvement. The payments are now made into the Treasury,

and there absorbed by the current expenses of the Government. The Land is sold, the money spent, and, by this process, ere long, that Estate, which came as a patrimony from our Fathers, and the enjoyment of which, in some form or other, should be regarded as a sacred right of inheritance in our Children, will be lost, utterly, both to us and to them.

It is represented to me, by the Agent, that the Lands appropriated by the Resolves of the 4th of March, 1828, and the 18th of February, 1829, for assignment to the non-commissioned Officers and Soldiers of the Revolutionary Army, who served three years, as a part of this States' quota, and were honorably discharged, or to their Legal Representatives, will be insufficient to satisfy the claims of all those, who are entitled to Lots under the bounty of the Government, and that a further designation by the Legislature, of the Townships out of which the particular assignments shall be made, will soon become necessary. So far from its being cause for regret, that these claims have proved numerous beyond anticipation, it is occasion of the truest joy, that there is yet allowed to the present generation, opportunity for a recognition, even by this poor gratuity, of obligations forever due to the services and sufferings of brave and patriotic Ancestors.

The Judicial investigation of an appalling outrage upon the inviolability of Habitation and Person, in a neighboring County, during the last year, has induced to a more thorough discussion, and certain understanding of the Law in relation to Principals and Accessories in Felonies. It is now solemnly settled, by the highest legal Tribunal, that the Rule of the Common Law, which requires that the principal Felon must be convicted before a supposed Accessory can be put upon Trial, unless by

his own consent, is directory to the administration of Justice in this Commonwealth. The Court, indeed, while feeling constrained to yield to the authority, express great disapprobation of this distinction. The late learned and lamented Chief Justice, whose last act, in a life of eminent virtue, true greatness, and public service, was a profound research into the foundation and support of the doctrine of the Common Law, in its application to our system of jurisprudence, that he might find wherewithal to overrule it, pronounced the difference which existed, in regard to the form and manner of Trial of Principals and Accessories before the fact, "*a relic of the unwise refinement of ancient times*," and suggested "that the Legislature would probably afford a remedy for future cases." The unsoundness of a rule, which, however plausibly it may be sustained by reasoning in the abstract, that there can be no Accessory without a Principal, and that there is no Principal until conviction, yet *practically* has a bearing only towards impunity for crime, cannot but be apparent. Its effect may be, and often has been, to discharge one guilty man, because another eludes Justice. Successful concealment or escape, or death by the visitation of Providence, or an act of self violence, may prevent a conviction of him who might be the weak and tempted Instrument of another in the commission of crime, and the consequence is entire immunity to the profligate and abandoned contriver and instigator of the wickedness.

Nor is the rule itself well supported by the only reason on which it rests. Innocence is not thereby better guarded from peril. There may be even less safety to the accused from this very course of proceeding. When deeds of rare and dreadful atrocity are perpetrated, and

the public mind beeomes greatly excited, the Trial of a supposed Principal may be precipitated or unconsciously prejudiced, in an honest zeal to reach the more guilty Accessory. But to the Accessory there can be no increase of danger from his previous trial to that of the Principal. He cannot be convicted, without proof of the guilt of *both*, and doubt as to the participation of *either* in the imputed offence, will sufficiently avail to his security. So satisfactory, in recent times, were the objections to the law, in that Country whence we derived it, that an Act of Parliament was passed in the last Reign, for its alteration, and now, in England, by the 7th George 4th, he who hires or procures a felony to be committed, " may be indicted and convicted, either as an accessory before the fact to the principal felony, together with the principal Felon, or after the conviction of the principal Felon ; or may be indicted and convicted of a substantive felony, whether the principal Felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice." The well known circumstances of the transaction to which I have alluded will furnish to your minds the best illustration of the reasons for passing a similar Statute, here. I submit it to you, respectfully, that it should not be the reproach of an enlightened Commonwealth, in a liberal age, that it became the last repository of the " relic" of a barbarous jurisprudence.

The importance to the community, of a prompt, able and efficient administration of Justice, will always secure to any proposition, by which it is designed to be facilitated, a favorable attention. It has of late been a subject of very general and just remark, that the increased business of the Supreme Judicial Court has occasioned a severe pressure on time for its regular and convenient

transaction, and imposed upon the Judges oppressive labor in the discharge of their duties. In both these respects, I apprehend, much relief might be afforded, and great advantages every way produced, by transferring the Criminal Jurisdiction, except only in Capital cases, to the Court of Common Pleas. When it is considered, how that Tribunal now is, and always may be, composed, of men of talents, learning, and sound discretion, enjoying the full confidence of the People, there can be no distrust, that, from such change, there would still remain the same security to innocence, and like certainty of the just conviction of guilt. The criminal code, from its object, and in the very nature of our Institutions, is plain and simple, and easy to be understood, rarely giving occasion, in the application of its principles to facts, or in the proceedings upon trials, to new, subtle, and difficult legal questions. Should these occur, they may be referred, upon Exceptions, or a Report of the Presiding Judge, for consideration and ultimate decision, to the highest Tribunal. It is also to be regarded, that the Grand and Traverse Juries are now by law constituted in the same manner in both Courts, being drawn by lot to serve in either, from the same Jury Boxes. Hence there would be no less qualification, or exercise of intelligence, in those with whom would rest the issues of fact.

As an additional consideration of much weight in favor of the alteration, the investigation of offences would be more prompt, from the greater frequency of the Terms of the Common Pleas. The accused, not unfrequently now, are confined for a period of six months, waiting the Circuit of the Supreme Court for opportunity for trial. To the Innocent, this imprisonment, in many cases, is scarcely less severe, than the punishment inflicted upon

crime, while to the Guilty, it metes out no measure of atonement, and offers no aid to reform. To the State, also, as the Treasurer's Accounts will exhibit, it is attended with great, and to any purpose but a compliance with the law, as it seems to me, most gratuitous expense. The Terms of the Common Pleas are held with intervals of half the time, and from the information which I have of the sittings, and of the duties of the Judges, faithfully and vigilantly performed as they are, the additional assignment of the criminal business would not constitute an unreasonable requirement of service.

By this arrangement, the Supreme Court would be spared much of that time which is so greatly needed for the trial of civil causes. With the original and exclusive jurisdiction of the numerous classes of cases, in which the punishment is imprisonment in the State Prison, no inconsiderable portion of each term, in the large Counties, is occupied in criminal trials, and with the imperative duty of delivering the Jails, these trials often greatly interfere with the business of the whole Court, on the Law Circuit. Grand and Traverse Juries are also assembled immediately upon the dismissals of precisely similar Bodies in the Common Pleas, with no other diversity of duties, than what results from the difference of jurisdiction in the tribunals before which they are convened, and the Traverse Juries are often detained waiting the argument of causes requiring the presence of the full Bench, to be afterwards put upon the discharge of their appropriate office in the trial of facts, before a single Judge.

With much reflection bestowed upon this subject, in all its various bearings, I am persuaded, that no greater improvement could be produced in the administration of Justice in this Commonwealth, than by the measure of

transferring the criminal jurisdiction in the manner proposed. To make it effectual to the despatch of business in the Supreme Court, it should be vested, with the exception before suggested, *exclusively* in the Common Pleas. This only could prevent interference with the civil business of the higher tribunal, and save the occasion, most generally, either of Grand or Traverse Juries, at the Law Sittings. To provide for the trial of capital cases, at these terms, it might be required of the Sheriffs of the respective Counties to certify commitments for such offences, to the Chief Justice, who thereupon would give order to the Clerks for issuing the proper venires for the attendance of Jurors. May it not also be worthy of inquiry, whether still further benefit would not result to the community, from enlarging the final jurisdiction of the Common Pleas in *civil cases*, by increasing the sum which now restricts the right of appeal. This would have a tendency to advance the usefulness and respectability of that Court, while it would keep from the docket of the appellate jurisdiction, many cases of less pecuniary importance than the costs incurred in their litigation.

On former occasions, I have earnestly pressed upon the attention of the Legislature, the claims of the impoverished and unfortunate to an amelioration of the laws which subject the person to imprisonment for debt. Increased information and greater liberality in public sentiment on this subject encourage the hope, that some measure of alleviation will now be adopted. Experience has abundantly proved how utterly unavailing is this species of coercion to the collection of debts. It may well be feared, that resort to it, in many instances, not only results in showing the incapacity, but in destroying, also, the very inclination to make payment. Deep, extensive, unalle-

viated distress is the consequence of the imprisonment of the honest poor, and with the privations of restraint to the debtor, are oft times mingled the keenest sufferings of tender and helpless families in want. Wise and provident legislation will mark the distinction between inability and fraudulent concealment, and while it will secure to the former the indulgence due to involuntary misfortune, it will punish the latter with a severity merited only by deliberate moral transgression. In the discussions which have been had before the public, various modes of relief have been proposed. But that which consists in extending exemption from arrests to a much larger amount of debt than at present, and in all other cases substituting security for the appearance of the debtor to submit to an examination, for imprisonment previous to an opportunity for showing his right to a discharge, appears to have been most favored. These are simple provisions, and do the least violence to former opinions and accustomed habits of business. If more than this, in your judgment, can practically be accomplished, without weakening the salutary restraints upon improvident credits, or impairing the motives to faithful endeavors in the fulfilment of contracts, it will meet from me a ready and most cordial approval.

By the Constitution and Laws, the civil functions of the Chief Magistrate are intimately associated with an attention to the Military Department of the Commonwealth, and it is no less his duty to make the situation and wants of the latter the subject of official communication, whenever occasion may require. The abstract of the last Annual Returns gives an aggregate of 49,560 enrolled men. The obligations, interests and feelings of so large a class of our Fellow Citizens can never be passed unheeded, or

be lightly treated. I have learnt, with much regret, that the law of the last Legislature, on the subject of military duties and exemptions, has failed to produce the satisfaction which was hoped from its enactment. While some of its provisions have proved highly salutary, others are practically defective, and have received various and opposite constructions. The law is thus rendered uncertain and unequal in its operation, and complaints of the whole system of organization and discipline still continue. Mingling as you do with those who are called to the performance of this service, and some of you doubtless engaged in its duties, and collectively here representing the situation and sentiments of the people of every part of the Commonwealth, I may best appeal to your own observation for a knowledge of the well founded objections which exist, and to your regard for constitutional duty and your love of country in determining the manner in which they may be obviated. But it should be borne in mind, that no system of mere obligations will ever be found altogether acceptable. The demand of personal service, like that of pecuniary taxes, is an exaction of contributions to the public good. Although it may very justly be regarded as a burden, yet it is necessarily made the price of civil and social security. That the militia system, however, is unreasonably onerous, cannot be controverted. Some palliatives may be afforded by State Legislation. But the remedy lies not here. It is time this matter was better understood. The radical defect is beyond and above all State Legislation. Effectual relief rests only with Congress. The Constitution of the United States has placed there, *expressly and exclusively*, the power of *organizing*, arming and disciplining the Militia, and it is to this organization, under an authority exercised

almost forty years since, that we may refer for the true ground of most of the complaints which are now considerately uttered. Can it be thought strange, that a law of Congress passed in 1792, when the population of the Country hardly exceeded one third its present amount, should be found inapplicable, through all the subsequent changes of circumstances and time to the condition of the People, and yet it is by the unrevised and unmodified provisions of an act of legislation of that year, *that to this day*, enrolments are made, and the Militia organized. Let appeals on this subject, henceforth, be directed to Congress, with the earnestness and force, with which, in overlooking that only competent authority, they have hitherto been addressed to the State Legislatures, and there might soon be, not only a correction of existing defects, but a well adapted system, and with at least as much efficiency of organized force, a better satisfied Militia. But while the paramount laws of the National Government remain unchanged, little can be done by State Legislation to conform the requirements of service to public sentiment and at the same time preserve in sufficient vigour and capacity for usefulness, an Institution so important, as in the very frame of our Republican Government to be declared "*necessary to the Security of a free State.*"

It becomes my duty to inform the Legislature that a vacancy has been occasioned in the Executive Council by the appointment of the Hon. Joseph E. Sprague, to the Office of Sheriff of the County of Essex.

I have thus, Gentlemen, presented to your attention numerous leading subjects of interest in the local concerns of the Commonwealth. In doing this, I have endeavored to confine myself within the strictest limits of official duty, and have aimed only to treat of matters of

business, plainly, and with the explicitness necessary to be understood in the communication. I regret the great length to which this Address is extended, but the importance of the subjects will, I trust, justify the notice they have received. There is no space left, without trespassing too far upon your indulgence, for a particular reference to more general topics. Nor is this indeed necessary. Upon the momentous questions of National concern, which now agitate the public mind, the voice of Massachusetts has been heard in her recent Elections. The People, *for themselves*, have proclaimed their firm and unalterable attachment to the Federal Union, and their regard for the supremacy of Constitutional law over Sectional interests and passions. They have given their votes to the support of that system of policy, which consists in accomplishing measures of Internal Improvement, protecting and encouraging Domestic Industry, and resting the enjoyment and preservation of free Institutions on a developement of the resources of the Country, the disinterested patriotism of the People, and the inviolable faith of the Government, the only basis of true National Independence and Glory.

In the late astonishing political movements in other Countries there is also felt a deep and animating interest. The internal commotions of the Kingdoms of Europe are the subversion of the foundations of Despotism. Liberal principles and acknowledged civil rights are, every where, breaking the shackles of oppression, and the minds and hearts of Freemen will sympathize in the strugglings, and respond with congratulations to the triumphs of liberated and disenthralled Nations.

It remains only, that I renew the assurances of an earnest desire to co-operate with you in any measures, which

in the fulfilment of our respective Official Trusts, under the overruling Providence of God, and with his invoked Blessing, may advance the interest and happiness of our immediate Constituents, and be promotive of the security, peace, and prosperity of our beloved Country.

LEVI LINCOLN.

Council Chamber,
Boston, January 5, 1831.

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